

DEFENSIVE DRIVING BOARD

Meeting Agenda - Thursday, April 16, 2015

Arizona Supreme Court -1501 West Washington Street

Phoenix, Arizona 85007 – 10:00 A.M. – Conference Room 109

General Inquiries Call: (602) 452-3378 (Certification and Licensing Division Line)

Members of the Public May Attend Meeting in Person

For any item listed on the agenda, the Board may vote to go into Executive Session for advice of counsel and/or to discuss records and information exempt by law or rule from public inspection, pursuant to the Arizona Code of Judicial Administration, Code Section 1-202(C).

CALL TO ORDER.....Daniel Edwards, Chair

1) REVIEW AND APPROVAL OF MINUTESDaniel Edwards, Chair

1-A: Review, discussion, and possible action regarding the regular session minutes for the meeting of February 19, 2015.

2) INITIAL CERTIFICATION AND ELIGIBILITYDivision Staff

2-A: Review, consideration, and possible action regarding pending initial certification of the following defensive driving schools:

1. Online, Anywhere, Anytime Defensive Driving
2. Piece of Cake Traffic School
3. Minimum Hassle, Super Easy, 100% Online Defensive Driving

2-B: Review, consideration, and possible action regarding pending initial certification of the following applicants for defensive driving instructor:

1. Michael Urueta
2. Joseph Kerby
3. Deborah Hemshrot

3) PENDING COMPLAINTSDivision Staff

3-A: Review, discussion and possible action regarding complaint number 14-D013 involving West Phoenix Driving School.

3-B: *Review, discussion and possible action regarding complaint number 14-D017 involving 2 Pass Defensive Driving.*

3-C: *Review, discussion and possible action regarding complaints number 14-D008 involving Nancy J. Sheperd and 14-D009 involving Arizona Defensive Driving School.*

3-D: *Update regarding the status of pending complaints.*

4) SUBCOMMITTEE CONCERNING SCHOOL NAMESDivision Staff

4-A: *Review, discussion and possible action regarding request by the Board to assemble subcommittee concerning defensive driving school names.*

5) ADMINISTRATIVE ISSUESDebbie MacDougall

5-A: *Nomination and election of the 2015 Defensive Driving Board's vice chair.*

CALL TO THE PUBLIC.....Daniel Edwards, Chair

ADJOURN.....Daniel Edwards, Chair

DEFENSIVE DRIVING BOARD

Agenda Summary - Thursday, April 16, 2015

1) REVIEW AND APPROVAL OF MINUTES

1-A: Review, discussion, and possible action regarding the regular session minutes for the meeting of February 19, 2015.

Attached for Board review and approval are the regular session minutes of the February 19, meeting.

DEFENSIVE DRIVING BOARD

Agenda Summary - Thursday, April 16, 2015

2) INITIAL CERTIFICATION AND ELIGIBILITY

2-A: Review, consideration, and possible action regarding pending initial certification of the following defensive driving schools:

1. Online, Anywhere, Anytime Defensive Driving
2. Piece of Cake Traffic School
3. Minimum Hassle, Super Easy, 100% Online Defensive Driving

The above three listed schools are internet format defensive driving schools. They applied for certification on March 11, 2015. The school's offices are located in Glendale, Arizona. The school's owners are Kevin Frei, Dean Frei, Jerilyn Frei and Dena Frei. The designated principal of these schools is Kevin Frei. The school is also known as Super Fly Defensive Driving, Slow Your Pony, Sir Waldorf Bentley's School for Naughty Drivers and Easy Peasy Defensive Driving.

Division staff has performed a review of the new school's applications and curricula.

It is recommended initial certification be granted to Online, Anywhere, Anytime Defensive Driving, Piece of Cake Traffic School and Minimum Hassle, Super Easy, 100% Online Defensive Driving.

DEFENSIVE DRIVING BOARD

Agenda Summary – Thursday, April 16, 2015

2) INITIAL CERTIFICATION AND ELIGIBILITY

2-B: *Review, consideration, and possible action regarding pending initial certification.*

The following applicants have submitted applications for initial certification. In the opinion of staff, the applications are complete and no information has been presented during the background which is contrary to certification being granted. The applicants have demonstrated they meet the minimum eligibility requirements for certification. It is recommended initial certification be granted to the following individuals:

1. Michael Urueta
2. Joseph Kerby – Applicant disclosed having filed a bankruptcy in 2010. Staff reviewed the bankruptcy and determined no adversarial complaints were filed.

The following application for initial certification has been processed and is submitted to the Board for additional review and consideration.

3. Deborah Hemshrot – Applicant failed to disclose being a plaintiff in a civil action regarding product liability against a pharmaceutical company. The action was settled and dismissed. Applicant stated that this had nothing to do with any traffic or criminal action her part and when staff spoke with her regarding her failure to disclose on the application, she stated that she must not have read the questions. Staff recommends to grant initial certification and include the following non-disclosure language:

The Board has concluded its review of your application and determined you have satisfied the requirements for certification. Although the Board is granting certification, the Board members have concerns regarding your failure to disclose your civil litigation. Lack of diligence is not a quality embraced by the Defensive Driving Board members or your colleagues in the profession, and may jeopardize your success in the future. The Board and the Division place the highest priority on honesty and candor. Your failure to disclose information on future applications may result in denial of your renewal of certification or disciplinary action.

DEFENSIVE DRIVING BOARD

Agenda Summary - Thursday, April 16, 2015

3) PENDING COMPLAINTS

3-A: Review, discussion and possible action regarding complaint number 14-D013 involving West Phoenix Driving School.

On October 16, 2014, the Board found that Abedirizan Said, an instructor for West Phoenix Driving School, violated the ACJA by exhibiting unprofessional behavior by attempting to ask a student “out for a date” after class; finished a defensive driving class almost thirty minutes early and sold snack items (chips & sodas) during class. At the same October 16, 2014 meeting, Division staff recognized that West Phoenix Driving School did not receive notice of the complaint and an opportunity to respond. The Division requested the Board “pull” West Phoenix Driving School from the agenda and allow the Division to complete its investigation. West Phoenix Driving School has received notice, provided a response and Division staff completed its investigation of West Phoenix Driving School’s actions regarding Allegations 1 through 3.

While Division staff acknowledges that West Phoenix Driving School may not have been aware of Said’s conduct as to Allegation 1, West Phoenix Driving School through the actions of its instructor, Said; its principal and owner Adde Ikar knew or should have known that items were being sold during class (Allegation 3) and class did not last the required 240 minutes (Allegation 2).

Therefore as to West Phoenix Diving School, it is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding West Phoenix Driving School has not committed the alleged act(s) of misconduct as detailed in Allegation 1 of the Investigation Summary and Allegation Analysis Report in complaint number 14-D012, 013.

It is further recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding West Phoenix Driving School has committed the alleged act(s) of misconduct as detailed in Allegation 2 and 3 of the Investigation Summary and Allegation Analysis Report in complaint number 14-D012, 013.

It is recommended the Board enter a finding grounds for informal disciplinary action exists pursuant to Arizona Code of Judicial Administration (“ACJA”) § 7-201(H)(6)(a) for act(s) of misconduct involving ACJA §§ 7-205(F)(25)(c) and 7-205(J)(1)(d).

It is further recommended the Board issue a Letter of Concern to West Phoenix Diving School.

DEFENSIVE DRIVING BOARD

Agenda Summary - Thursday, April 16, 2015

3) PENDING COMPLAINTS

3-B: Review, discussion and possible action regarding complaint number 14-D017 involving 2 Pass Defensive Driving.

Complainant says "2 Pass Defensive Driving School" (TPDDS) has established a pattern of sporadic and excessively late student diversion fee submissions. Complainant identified 4 separate cases dated between May and October 2014 with 2 cases resulting in license suspensions. Snow stated the defendants all attended TPDDS and none of their completion information or fees were received by the court until requested by the Complainant.

Fox admitted errors and insisted TPDDS has implemented new procedures for efficiency. Fox complained one of his staff, the son of "one of his good friends," had been responsible for many of the clerical duties of the office, including mailing checks and reports to the courts. Fox claims he and his wife now personally go over the paperwork every week to ensure they are in compliance. Fox also admitted technical difficulties with his automated court reporting, specifically noting anomalies in the system that make it difficult to cross reference completion reports, citations and the actual student he has in attendance of his classes. Fox claims he has corrected this problem by matching up the physical citations with checks received from students. Fox believes he should not have any further issues with his court submissions.

The Board has previously considered similar allegations in Complaint Number 14-D014 and imposed a 30 day suspension as well as other sanctions. TPDDS has requested an appeal regarding the Board's action concerning 14 – D014.

It is recommended that Board accept the finding of the Probable Cause Evaluator and enter a finding TPDDS has committed the alleged act(s) of misconduct as detailed in the Investigation Summary and Allegation Analysis Report in complaint number 14-D017.

It is recommended the Board consolidate this matter with 14-D014 and enter a finding grounds for formal disciplinary action exists pursuant to Arizona Code of Judicial Administration ("ACJA") § 7-201(H)(6)(a) for act(s) of misconduct involving ACJA § 7-205(F)(28)(f)(2) failure to transmit remittance reports and diversion fees to appropriate courts. In the alternative, in the event it is not possible to consolidate 14-D014 and D-014, it is recommended that the Board impose a 30-day suspension to run concurrently with the suspension imposed in 14-D014.

DEFENSIVE DRIVING BOARD

Agenda Summary - Thursday, April 16, 2015

3) PENDING COMPLAINTS

3-C: *Review, discussion and possible action regarding complaints number 14-D008 involving Nancy J. Sheperd and 14-D009 involving Arizona Defensive Driving School.*

Nancy J. Sheperd – 14-D008:

On June 21, 2014, the Complainant participated in a defensive driving class instructed by Sheperd. Complainant alleged Sheperd behaved in an unprofessional manner by being rude and disrespectful and making offensive remarks during class.

Sheperd denied the allegations and accused Complainant of being aggressive and difficult during class. She believed she was “set up” by Division staff who were in attendance for the purpose of monitoring the class.

Division staff was at the class to monitor Sheperd because she previously failed an evaluation in January 2014 for failing to comply with the approved curriculum. Sheperd failed the re-evaluation for the same reasons. Division staff viewed Sheperd’s behavior as unprofessional due to the comments she made in class and in how she dealt with Complainant.

On December 29, 2014, the Division staff sent Sheperd an email to schedule an interview with her to which she replied, “I resigned.” The Division responded to her informing her that despite her resignation the Division was required to complete the investigation and needed to interview her and again requested a suitable time for an interview. Sheperd did not reply and on December 30, 2014, the Division sent a follow up email to her requesting a suitable time and date to conduct an interview with her. Sheperd failed to respond so the Division sent an email on January 6, 2015, seeking a response from her and an appropriate time for an interview. That email went on to advise Sheperd that should she not respond by the end of business on January 7, 2015, the Division would proceed to call her at the telephone number on file in order to conduct an interview and further advised that, in the event she did not respond to the email correspondence or was not available by telephone, the Division would assume that she was not prepared to cooperate further with the investigation and note this in the Investigation Summary submitted to the Board.

On January 8, 2015, the Division placed a telephone call to Sheperd’s contact number and left a message informing her that the Division required her cooperation with the investigation and her lack of response appeared to show a lack of willingness to do so. On that same day, the Division sent Sheperd an email informing her of the telephone message left at her number and that the Division believed she was unwilling to cooperate further and the investigation would continue without her involvement. At the time of this report, Sheperd has not contacted the Division.

It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding Nancy Shepard has committed the alleged act(s) of misconduct as detailed in the Investigation Summary and Allegation Analysis Report in complaint number 14-D008.

It is recommended the Board enter a finding grounds for formal disciplinary action exists pursuant to Arizona Code of Judicial Administration ("ACJA") § 7-201(H)(6)(a) for act(s) of misconduct involving Allegation 1: Sheperd conducted herself in an unprofessional manner because she was rude and disrespectful and made inappropriate comments during class (ACJA § 7-205(J)(2)(b)(1) and (5)); Allegation 2: Sheperd failed to instruct students in the approved curriculum (ACJA §§ 7-205(J)(2)(a) and (b)). Allegation 3: Sheperd did not make herself available and failed to cooperate with Division staff during the investigation (ACJA §§ 7-201(E)(c)(2)(b)(xvi), 7-201(F)(4) 7-201(H)(6)(a),(b),and (c) and 7-201(H)(3)(c) and (I).

It is further recommended the Board revoke Sheperd's certification.

Arizona Defensive Driving School – 14-D009:

On June 21, 2014, the Complainant participated in a defensive driving class instructed by Sheperd. Complainant alleged Sheperd behaved in an unprofessional manner by being rude and disrespectful and making offensive remarks during class.

Sheperd denied the allegations and accused Complainant of being aggressive and difficult during class. She believed she was "set up" by Division staff who were in attendance for the purpose of monitoring the class.

Division staff was at the class to monitor Sheperd because she previously failed an evaluation in January 2014 for failing to comply with the approved curriculum. Sheperd failed the re-evaluation for the same reasons. Division staff viewed Sheperd's behavior as unprofessional due to the comments she made in class and in how she dealt with Complainant.

After Division staff initially monitored Shepard on January 24, 2014, Anne Hunter contacted Michael Truscio by telephone shortly after the monitoring to advise him of the outcome of evaluation and forthcoming report. Then on March 26, 2014, the Division emailed the report from the first evaluation to Sheperd and Arizona Defensive Driving School/Truscio on March 26, 2014. Arizona Defensive Driving School waited until it received the written report before speaking with Sheperd about the evaluation and afterward had a one hour long conversation with her. She denied missing any portion of the curriculum contrary to the Division's report. Arizona Defensive Driving School/Truscio requested that she "refresh" her teaching approach and ensure she covered everything because a follow up monitoring was likely.

On June 21, 2014, Sheperd was monitored again and the Division concluded that she did not meet the standards for an instructor and did not teach the approved curriculum. Hunter contacted Arizona Defensive Driving School/Truscio by telephone shortly after the monitoring and advised him of the outcome of that evaluation. The written report was emailed to Sheperd and Arizona

Defensive Driving School/Truscio on August 16, 2014. Arizona Defensive Driving School/Truscio apparently had three conversations with Sheperd. In the first conversation they reviewed the evaluation at which time Sheperd again refuted that she missed any portion of the curriculum and alleged that the Division was “out to get” her. Arizona Defensive Driving School/Truscio then proposed to Sheperd a remedial plan which included but was not limited to her observing a defensive driving course taught by a veteran instructor and then meeting with Truscio to discuss her observations.

It appears Arizona Defensive Driving School/Truscio made some effort to address the deficiencies noted in the January 2014 evaluation by speaking directly with Sheperd about the Division’s reported concerns although Sheperd denied that she did not fully comply with the approved curriculum. The June 21, 2014, evaluation yielded similar concerns and outcomes but Sheperd again denied any wrongdoing, disputed the report, and further alleged Division staff was unjustly faulting her. Arizona Defensive Driving School/Truscio did not consult with Division staff about this issue. Arizona Defensive Driving School/Truscio acknowledged that Hunter contacted him shortly after the June 21, 2014, re-evaluation to inform him of the outcome of the monitoring and he received the written report, via email, on August 16, 2014. However, Arizona Defensive Driving School did not develop a corrective action plan to address Sheperd’s documented deficiencies until November 2, 2014.

Division records confirmed that Sheperd instructed approximately four (4) separate defensive driving classes for various schools owned by Truscio after the second evaluation and report. Arizona Defensive Driving School allowed Sheperd to continue to teach in its schools despite the Division’s documented violations and Sheperd’s failure to comply with the requisite curriculum.

It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding Arizona Defensive Driving School has committed the alleged act(s) of misconduct as detailed in the Investigation Summary and Allegation Analysis Report in complaint number 14-D009.

It is recommended the Board enter a finding grounds for informal disciplinary action exists pursuant to Arizona Code of Judicial Administration (“ACJA”) § 7-201(H)(6)(a) for act(s) of misconduct involving Allegation 4: Arizona Defensive Driving School/Truscio did not, in a timely manner, actively supervise Sheperd to ensure compliance with the approved curriculum and classroom responsibilities (ACJA §§ 7-205(F)(1) and (2); 7-205(F)(5)(b) and (10) and (5); 7-205(J)(1)(c)(2) and (d));

It is further recommended the Board issue Arizona Defensive Driving School a Letter of Concern.

DEFENSIVE DRIVING BOARD
Agenda Summary - Thursday, April 16, 2015

3) PENDING COMPLAINTS

3-D: Update regarding the status of pending complaints.

As of April 9, 2015, there are nine (9) open complaints, three of which have been presented on this agenda with dispositive recommendations under agenda items 3-A, 3-B and 3-C.

DEFENSIVE DRIVING COMPLAINTS
COURTOOLS MEASURE 4
AGE OF PENDING CASELOAD
Shaded Areas Indicate Cases within Time Standard of 22 Months

| Age (Months) | Number Cases | Percent | Cumulative Percent |
|-------------------------|-------------------------|----------------|-------------------------------|
| 0-4 | 3 | 33% | 33% |
| 5-9 | 5 | 56% | 89% |
| 10-14 | 1 | 11% | 100% |
| 15-19 | | | |
| 20-22 | | | |
| 23-35 | | | |
| 36-50 | | | |
| Over 50 | | | |
| Total | 9 | 100% | 100% |

DEFENSIVE DRIVING BOARD
Agenda Summary - Thursday, April 16, 2015

4) SUBCOMMITTEE CONCERNING SCHOOL NAMES

4-A: Review, discussion and possible action regarding request by the Board to assemble subcommittee concerning defensive driving school names.

Division staff will provide information at the Board meeting.

DEFENSIVE DRIVING BOARD
Agenda Summary - Thursday, April 16, 2015

5) ADMINISTRATIVE ISSUES

5-A: Nomination and election of the 2015 Defensive Driving Board's vice chair.

ACJA § 7-201(I)(3)(b) reads:

Vice Chair. The board shall elect a vice chair from among the appointed members of the board. The vice chair shall serve in the capacity as vice chair for a specified term. If the vice chair resigns or ceases to be a member of the board, the board shall vote to elect a new vice chair from among the existing members. The vice chair shall act as chair in the absence of the chair.

It is recommended the Board nominate and appoint a vice chair for the 2015 calendar year so that other board members have the opportunity to serve in that capacity.